

Open session

Board meeting: 20 July 2022

Agenda item: 9

Subject: Establishment of an Appeals Committee

Action: For decision

Purpose

The Building Safety Act amends the Architects Act 1997 to establish a new appeals committee so that individuals can challenge a decision to refuse their application for registration or a decision to remove them from the Register under the continuing professional development scheme. The change to the Act in this area has come into force and so we need to establish the Committee as quickly as is practical.

Legislation sets the scope for which decisions can be appealed to the Committee but ARB has the powers to set rules governing the Committee's functions. This document sets out our recommended approach for how the Committee could be established and:

- i) seeks the Board's approval of these proposals before we consult on them; and
- ii) seeks the Board's agreement as how the draft rule changes should be dealt with prior to consultation.

Recommendations

It is recommended that the Board:

- i) approves the draft policy as to how an individual can appeal to the Committee and the draft procedure for the Committee, as well as its composition, for consultation;
- ii) notes that draft rule changes will additionally be required to underpin the establishment of the Committee, as well as the appeals policy and procedure;
- iii) decides how the proposed draft rule changes should be approved before they are issued for consultation.

This can be done either:

- Via a Board write round; or

- By delegating authority to the Chief Executive and Registrar to approve them

The Board is asked to decide which option should be taken forward.

Annexes

Draft text for consultation

Author/Key Contact

Emma Matthews, Director of Governance and International - EmmaM@arb.org.uk

James Farrar, Policy and Public Affairs Manager - JamesF@arb.org.uk

Henry Asson, Policy Officer – HenryA@arb.org.uk

1. Open/Confidential Session

Open session

2. Background and Key points

- 2.1. The new committee is intended to provide a non-judicial route of appeal to aggrieved persons within its scope. This aims to make the appeals process more accessible than the current route, which is to the Board directly and then to the High Court. It also aims to ensure that architects removed from the Register under the new competence regime (our future CPD scheme) will have recourse to challenge that decision.
- 2.2. The Act set the scope for which decisions can be appealed to the committee. It means the Committee will be able to consider appeals against:
- a decision to refuse an application for registration, or
 - a decision not to annually re-enter someone onto the Register because the Board is not satisfied that they've gained recent practical experience or training (as per our new continuing professional development scheme).
- 2.3. However, the Act provides ARB with the powers to set rules over the Committee's composition and functioning.
- 2.4. In line with other requirements in the Act and our wider policy and communications strategy, we need to consult on the proposed draft rules before they are implemented. We would also like to consult on our proposed policy and process. Due to the delays in the final legislation being approved and the timing of our Board meetings, we have not yet had an opportunity to draft the new rules that will be needed. The annex sets out our thinking and direction of travel in relation to these draft rules. These are based on our interpretation of the amendments to the Act, legal advice and wider research into the procedures and policies of other professional regulators. Should the Board approve the draft policy and procedures, we will then draft the required rules. Before they are issued for consultation, we will require Board approval of the draft rules. Given the time constraints and noting that we need to operationalise the new appeals process as quickly as possible, the Board has two options in terms of approving the proposed draft rules. The Board could either approve the rules via write round, or alternatively, the Board could delegate authority to the Chief Executive & Registrar to approve the draft rules.
- 2.5. We expect a low number of responses because of the narrow nature of the topic and the small number of individuals who would be affected. We will analyse the responses we receive and then consider how to implement and establish the committee following this feedback.
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3. Resource Implications

- 3.1. We currently receive a very low number of appeals each year. This may increase as it becomes easier for individuals to appeal.

- 3.2. The Committee will require members and a Chair to hear and make decisions on any appeals. These members will be remunerated (for work undertaken) as with other ARB committees. ARB resources will also be required for administering appeals and the committee, as well as responding to appeals that it considers.
 - 3.3. Our proposed approach minimises the resource implications of the new committee. First, we propose to charge a fee to individuals when they appeal. This would aim to recover the costs of responding to the appeal. Under the proposed approach, some or all of the cost may be refunded if the appeal is successful. Our intention is that the Board will set and agree the fee as part of the 2023 budget and retention fee setting process. Our intention would be for the fees for this process to apply from late this year rather than 2023, so that the Committee can start to function fully.
 - 3.4. Second, we also propose to appoint committee members from existing ARB committees, such as the Professional Conduct Committee. This would reduce the resource costs in recruiting members.
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4. Risk implications

- 4.1. The change to the Act came into effect on 28 June 2022. There is therefore now a risk that an individual may wish to appeal to the committee against a decision we make.
 - 4.2. The updated Act specifies that rules on the composition of the committee are subject to consultation with the Secretary of State. This will be noted in the consultation and, if the Board approves these proposals, we will write to the Secretary of State to meet this requirement. We are not required to consult on each appointment.
 - 4.3. We are aware of risks in relation to recruitment of members to the new appeals committee given the low numbers of cases we expect the committee to consider. In our view and experience we may struggle to recruit new members to a committee and the best way to mitigate this risk is to use existing ARB committee members.
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5. Communication

- 5.1. We will consult via our public Citizen Space platform for six weeks. The consultation will ask respondents to consider the proposals and share any views they have.
 - 5.2. The consultation will be promoted to all architects through ARB Insight, and shared on all our social platforms so that those outside the Register are also able to see it. We will also share it with our legal contacts and associates.
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6. Equality and Diversity implications

- 6.1. The scope of the Committee and the processes we propose would apply in the same way to all architects. In setting up the Committee, we will be mindful of the need to have diverse and inclusive representation.
- 6.2. The proposals include allowing reasonable adjustments to our processes in special circumstances.

- 6.3. Starting with our State of the Nation report that we are due to publish later this year, we will keep track of data about the characteristics of those who make complaints or are subject to them. We will keep track of similar data on the new Appeals Committee and its decisions, to determine whether there are any trends that are detrimental to equality, diversity and inclusion. If we do note any trends, we will assess them and consider solutions.
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7. Recommendations

7.1 It is recommended that the Board:

- i. approves the draft policy as to how an individual can appeal to the Committee and the draft procedure for the Committee, as well as its composition, for consultation;
 - ii. notes that draft rule changes will additionally be required to underpin the establishment of the Committee, as well as the appeals policy and procedure;
 - iii. decides how the proposed draft rule changes should be approved before they are issued for consultation.
 - a. This can be done either:
 - i. Via a Board write round; or
 - ii. By delegating authority to the Chief Executive and Registrar to approve them
 - iii. The Board is asked to decide which option should be taken forward.
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Annex – Draft text for consultation

Introduction

The Architects Registration Board (ARB) is an independent professional regulator, established by Parliament as a statutory body, through the Architects Act, in 1997. We are accountable to government.

The Building Safety Act 2022 amends the Architects Act to establish a new appeals committee (the Committee).

This is intended to provide a non-judicial route of appeal to aggrieved persons, which will make the appeals process more accessible for architects. It also aims to ensure that architects removed from the Register under the new continuing professional development scheme will have recourse to challenge the decision.

The amendments to the Act set the scope for which decisions can be considered by the Committee but provide ARB with the powers to set rules over its composition and functioning.

We are inviting views on the approach we plan to take and the draft rules to implement these. These are set out below, along with an illustrative flowchart showing what the process would be for a typical appeal.

1. Scope of the Committee

1.1 The scope of the Committee is set in legislation and means that individuals will be able to appeal against:

- a decision to refuse their application for registration, or
- if they wish to be retained or re-entered onto the register annually, a decision to remove or not re-enter them because the Board is not satisfied that they have gained sufficient recent practical experience or undertaken sufficient recent training

2. Appealing to the Committee

2.1 Appeals must be made in full and in writing within 28 days of receiving notice of the ARB decision. If a decision is appealable, this notice will include informing the individual of this time limit and the way in which an appeal can be made.

2.2 Appellants can provide supplementary written evidence to support an appeal, this can include supporting information from third parties. Written evidence should be submitted alongside the written notice of appeal. ARB would provide information about how to submit supporting evidence and what kinds of information individuals may want to consider including in order to aid the Committee's decision.

- 2.3 Appeals can be withdrawn in writing.
- 2.4 ARB will set a fee that must be paid by an individual before their appeal begins to be processed. This will be set at a level that recovers ARB's full costs in responding to an appeal. This approach means that those using the service are paying for it, rather than it being added to the annual retention fee which would instead share the cost across all registered architects.
- 2.5 If the appeal is successful, the Committee will have the discretion to determine on a case-by-case basis whether an amount should be refunded by ARB to the individual making the appeal.
- 2.6 Taking a proportionate approach, ARB is proposing the following::
- For appeals against a decision to refuse an application for registration, the appealing applicant will remain unregistered pending the outcome of the appeal.
 - For appeals against decisions not to retain or re-enter an architect on the Register under the new competence scheme, the appealing registrant should remain on the Register pending outcome of the appeal.

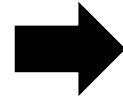
3. Procedure for the Committee and its composition

- 3.1 We intend that the committee will consist of a Chair, a lay person and a current registrant. These could include members of ARB's Professional Conduct Committee due to their familiarity with ARB's processes and the fact that the Appeals Committee will not be considering appeals against decisions of that committee. The selection and terms of office will follow ARB's existing policy used for other committees. We would also retain the flexibility to increase the number of committee members at a later date if the Committee's workload increases or we receive a series of appeals at the same time.
- 3.2 Rules on the composition of the Committee are also subject to consultation with the Secretary of State. Individual appointments would not be.
- 3.3 If the appeal is accepted for consideration, the Committee will list and then meet to consider the case. We anticipate that appeals will be considered within a maximum of three months from receipt of the appeal.
- 3.4 An individual making an appeal will not have an automatic right to be heard or represented at a meeting of the Committee. However, as a reasonable adjustment, the Committee may allow an appellant to submit evidence in person where special circumstances permit (e.g. a disability that would justify a reasonable adjustment).

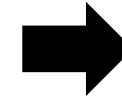
- 3.5 The Committee could consider any information it believes to be relevant to the decision. This can include prior disciplinary issues or criminal convictions. The Committee should be transparent about why any historical information has been considered.
- 3.6 The Committee may make any decision that could have been made by the initial decision-maker, as in, the person whose decision is being appealed against. For example, the Committee could decide to accept an application for registration when the initial decision was to refuse that application.
- 3.7 The Committee will have a quorum of two, with decisions requiring at least one lay person and one registrant.
- 3.8 The Committee will vote on the final decision, with decisions decided by simple majority and the Chair having the casting vote if required.
- 3.9 Notice of a decision by the Committee will be sent via a written letter and email. This may change at a later date, depending on future changes to the Architects Act and the requirements it places on how ARB corresponds with individuals.

Initial decision

A decision by ARB to refuse an application for registration or to remove someone from the Register under the new competence scheme



The individual has **28 days to appeal** in writing
If a registration decision, they remain unregistered
If a competence decision, they remain registered



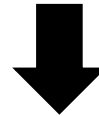
No appeal

The individual is removed from Register or remains unregistered, as under the initial decision

Note: the flowchart design is a placeholder and will be updated before the consultation is published

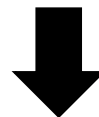
Appeal made

ARB organise a meeting of the Committee and facilitate the appeal process



Committee meeting

The Committee meets to consider and vote on the appeal. It can make any decision that the initial decision maker could have made.

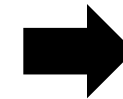


Decision implemented

The decision is implemented by ARB

Notice of decision

The Committee writes to the individual to tell them the decision.



Registration appeals

The individual is either added to the Register or remains unregistered

Competence appeals

The individual is either removed from the Register or remains registered